

SEP 3 2020

Civil Action No. 2:17-cv-00211

Plaintiff's Motion for T.R.O. and/or Preliminary Injunction  
With Inmate Declaration in Support

I, Toby K. Payne, am the plaintiff in the above styled action. I motion the court for a Temporary Restraining Order and/or a Preliminary Injunction ordering the defendants to show good cause on why I should not be immediately transferred (rehased) back to general population and why my psychotropic medications, Zyprexa 10mg (antipsychotic) & Effexor 75mg (antidepressant), should not be transferred with me where ever I am transferred to.

Inmate Declaration in Support

On December 3, 2019, I was forced to transfer from general population at the Robertson Unit to this same Chronic Mentally Ill ("C.M.I.") treatment program here at the Clements Unit. This action is primarily about the 20 months I was previously in this C.M.I. program. I was crudely and unlawfully treated as an administrative segregation inmate and confined to my single occupancy solitary confinement cell virtually 24 hours a day. My actual custody level then was general population level 2 (G2).

Presently, not much has changed in the way I am treated in this C.M.I. program. In fact, I would say that the situation has gotten worse. Now, I am literally kept in

my cell 24 hours a day in solitary confinement. My current actual classification level is G4. I will be eligible for promotion to G2 in November 2020. I have formally asked to be discharged from C.M.I. several times in the past few months only to basically be ignored.

At the beginning of this year, I did go through a few months of mental instability because of the conditions of this type of confinement and the fact that I was forced to come here. Stripped of all my general population rights and privileges. My medications have changed several times and properly adjusted and I have been mentally stable for several months now. I've told the mental health staff several times that this type of confinement is now doing me more harm than good.

This C.M.I. program cannot really be called a treatment program. Hardly any counseling is provided. My counselor can only counsel me cell-side for about 5 minutes once per week. While at the Robertson Unit, my counselor Ms. Hawland, counseled me once a week in her office for 30 to 45 minutes each session. I am supposed to get only one hour of recreation outside my cell and a shower each day. But even these basic rights are denied virtually every day due to actual ~~other~~ staff shodiness of officers. I have to bathe myself by sitting reverse on my toilet and using my coffee cup to pour water over myself. I recreate in my cell by pacing diagonally 7 steps one way.

This type of solitary confinement of the mentally ill

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is nothing more than the unlawful warehousing of mentally unstable (and some stable) men. I liken it to a pound for stray cats and dogs. Only our cages are bigger. This type of solitary confinement, with no promise of ever returning to general population, is causing me extreme mental anguish. No human being is built to be confined in solitary confinement 24 hours a day for months and years on end. I am no exception.

I already suffer from a mental disorder called schizoaffective disorder. This type of confinement, with virtually no therapy, only worsens my condition. Up until the end of June and the beginning of July 2020 I had lost all hope of a future with a purpose and attempted to hang myself. I still have the scar on my neck from it. I also tried to bite the veins out of my left wrist and still have that scar. It is only by the grace and mercy of God that I got past being suicidal. I was provided no therapy for it. I canceled with God. I also canceled with my mother and step-father via mail. It takes an incredible amount of faith for me to muster in order to make it through each day. I can barely keep my head above water mentally speaking. I keep my radio tuned in to 99.7 Radio by Grace here in Amarillo.

There are about 234 other men housed where I am housed. Most of them are severely mentally unstable and will not get better because they, like me, are being neglected. I have to listen to one inmate down the row from me bang his food tray on his desk a various times a day. This same inmate steps up his toilet and floods the whole row out. The

inmate next to him beats on his cell door in fits of rage while yelling things I cannot understand. Every time a nurse comes around, my neighbor yells the same rehearsed expression of some constitutional violation. My neighbor below me yells in the most vulgar things about Jesus because he knows I am a follower.

This type of confinement is causing me irreparable mental harm. I don't want to, but I could slip into a suicidal state again. I am constantly being denied many privileges and rights that I did nothing to lose. I am cut off from fellowshiping with other inmates. I cannot attend religious services. I cannot walk to the chow hall to eat. I cannot walk to the infirmary. I cannot walk to the regular library or attend sessions in the lay library. I cannot use the offender telephone system to call my family. I cannot recreate as a G4/G2 inmate. I am not receiving nearly as much counseling as I was when I was in population. To add insult to injury, any time I leave my cell, I am handcuffed behind my back for no reason at all. Other G4/G2's are not treated in this manner in population.

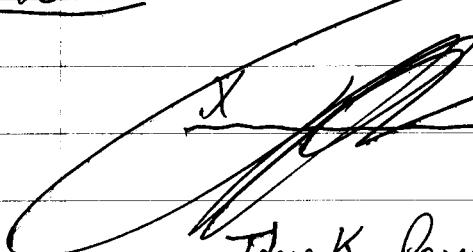
I do have a step 1 in process on why I cannot be discharged from C.M.I. It can take up to 45 days to process this grievance. Then I would have to file a step two. Another 45 days. 90 days. I have attached a similar grievance submitted earlier this year. Sheltered Hastings is just another "program" within C.M.I. I was even told by a ~~co~~ counselor that Sheltered Hastings inmates are not to be provided any  
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counseling. Judging from the response in the attached Step 1, my current Step 1 on this issue and its response will not be favorable to me. I've already been confined this way for eight months.

I respectfully ask the court for a hearing on this issue so I can verbalize this. It would be much easier for me to do so. I can easily answer any questions the court has and counter any arguments the defendants have.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED ON 9/5/20

Toby K. Payne #1720023

Clements Unit

9601 Spry St

Amarillo, TX 79107



~~Possible Emergency Grievance~~ ~~TDCJ~~

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Texas Department of Criminal Justice

**STEP 1**

**OFFENDER  
GRIEVANCE FORM**

12 B 11

12 E-75

Offender Name: Tony K. Payne TDCJ # 1720023  
 Unit: Clements Housing Assignment: 172A46  
 Unit where incident occurred: Clements 172-C-2232

OFFICE USE ONLY

Grievance #: 2020079385  
 Date Received: FEB 19 2020  
 Date Due: 4-4-20  
 Grievance Code: b72  
 Investigator ID #: 2763  
 Extension Date: \_\_\_\_\_  
 Date Retd to Offender: MAR 26 2020

You must try to resolve your problem with a staff member before you submit a formal complaint. The only exception is when appealing the results of a disciplinary hearing.

Who did you talk to (name, title)? Warden's Office, Classification(Chief Unit), UCC When? 2/14/2020

What was their response? none to date

What action was taken? none to date

State your grievance in the space provided. Please state who, what, when, where and the disciplinary case number if appropriate

This grievance is mainly regarding the fact that I am presently a G4 custody level offender who has requested numerous times to C.M.I. mental health staff to be discharged from C.M.I. and immediately transferred back to CP. I am unlawfully & unlawfully housed in an "Act-Say" environment against my will. C.M.I. staff has granted my discharge by moving me from Level 3 to S.H. or Sheltered housing according to Gender Farley & Dr. Nguyen awaiting "Huntsville" to transfer me back to population. Mental Health Staff has told me that this transfer back to population could take months or even a year. This makes no sense. I presently have 4 active pending federal lawsuits against TDCJ officials as follows: In the Amarillo Fed. Dist. Court, Payne v. Sotterfield, et al., #2:17-cv-07011, filed in Dec. 2017 against TDCJ officials and Texas Tech officials overseeing this very CMI program for unlawfully housing me back here as "act-say" for 20 months while I was a G2B3 offender; Payne v. Sotterfield, et al., #2:18-cv-07084, filed in 2018 against CMI staff for not providing any transition counseling back to CP when I was involuntarily discharged in June 2017 and sent to Robertson; Payne v. Lorrie Davis, #1:18-cv-07048, filed against TDCJ Anderson City officials for religious persecution for me wanting to grow my beard. NOTE: In this suit I also indicated that I shave my head for religious reasons as well. To mourn the death of my son as the Hebrews did in the OT of the Hbd Bible. To date, since I've been here (since 12/3/2019) I have not been provided any access to grooming implements. Nor has a barber been sent back here for haircuts, trim beards, or nail clipping. Lastly, Payne v. Bryan Collier, et al., #1:18-cv-07048-BU (NOTE: these last two cases are pending in the Abilene Fed. Dist. Court) filed in Dec. 2018 against state level, TDCJ & Texas Tech officials for retaliation against me for filing previous lawsuits. Now, I am currently eligible for promotion to G2. On Monday 2/10/2020 I was brought before UCC and only told I was promoted to Line 1. I was told no cases for a year. So why was I not also reviewed and promoted to G2? I mentioned the lawsuits not as a threat but to inform you

that I can and will file a motion for a preliminary injunction to acquire my immediate transfer back to general population. If it should take no more than 72 hours for "Huntsville" to transfer me back to, Robertson or elsewhere, 1/2 population. You can't should not have to get involved in this particular process. If it should have to come to that, it would not reflect well on the defendants. ~~ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED~~ T-60's sent to CMC & Wardens office regarding issue on 2/14/2020. \*END OF STATEMENT\*

## Action Requested to resolve your Complaint.

Please, please transfer me back to general population  
and properly review me for promotion to ??

Offender Signature:

Date: 2/15/2020

GRIEVANCE REVIEW OF YOUR RECORDS DOCUMENTATION INDICATES THAT YOU WERE DISCHARGED FROM CMI AND

REFERRED TO SHELTERED HOUSING WHICH IS A TDCJ HOUSING ASSIGNMENT. NO FURTHER ACTION WARRANTED

Signature Authority:

Dan Kuf D. MARKgraf

Date: 3-9-2020

If you are dissatisfied with the Step 1 response, you may submit a Step 2 (I-128) to the Unit Grievance Investigator within 15 days from the date of the Step 1 response.  
State the reason for appeal on the Step 2 Form.

Returned because: \*Resubmit this form when the corrections are made.

- 1. Grievable time period has expired.
- 2. Submission in excess of 1 every 7 days. \*
- 3. Originals not submitted. \*
- 4. Inappropriate/Excessive attachments. \*
- 5. No documented attempt at informal resolution. \*
- 6. No requested relief is stated. \*
- 7. Malicious use of vulgar, indecent, or physically threatening language. \*
- 8. The issue presented is not grievable.
- 9. Redundant, Refer to grievance # \_\_\_\_\_.
- 10. Illegible/Incomprehensible. \*
- 11. Inappropriate. \*

UGI Printed Name/Signature: \_\_\_\_\_

Application of the screening criteria for this grievance is not expected to adversely affect the offender's health.

Medical Signature Authority: \_\_\_\_\_

OFFICE USE ONLY	
Initial Submission	UGI Initials: _____
Grievance #:	_____
Screening Criteria Used:	_____
Date Recd from Offender:	_____
Date Returned to Offender:	_____
2 <sup>nd</sup> Submission	UGI Initials: _____
Grievance #:	_____
Screening Criteria Used:	_____
Date Recd from Offender:	_____
Date Returned to Offender:	_____
3 <sup>rd</sup> Submission	UGI Initials: _____
Grievance #:	_____
Screening Criteria Used:	_____
Date Recd from Offender:	_____
Date Returned to Offender:	_____

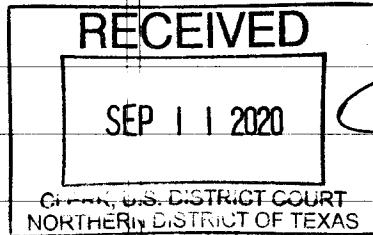
9/5/20

Re: Payne v. Sudderfield, et al.  
Case 2:17-cv-00211-Z-BR Document 39 Filed 09/11/20 Page 8 of 9 PageID 455  
#2117-cv-00211

Dear Clerk of the Court,

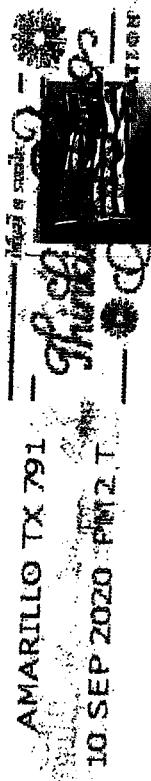
Please file the enclosed documents in the above styled action.

Sincerely,



Toby K. Payne #172023  
Clements Unit  
9601 Spur 591  
Amarillo, TX 79107

Troy K. Payne #1780823  
Clemmons, Chif  
9601 State 591  
Amarillo, TX 79107  
\*Legal Mail\*



FOREVER / USA

RECEIVED

SEP 11 2020

CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS

U.S. District Court  
Northern Dist. of Texas  
805 E. Fifth St., Am, 1833  
Amarillo, TX 79101-1559

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